

EXHIBIT 1

1 COUNTY COURT OF THE STATE OF NEW YORK
2 COUNTY OF MADISON

3 THE PEOPLE OF THE STATE OF NEW YORK, Waiver & Plea

4 -vs-

Index No. 2014-0057

5 RYAN M. MAHAR,
6 DEFENDANT.

7 Madison County Courthouse
8 Court Street
9 Wampsville, New York
10 July 14, 2014

11 B E F O R E:

HONORABLE DENNIS K. MCDERMOTT,
12 Judge Presiding

13 A P P E A R A N C E S :

14 WILLIAM GABOR, ESQ.
15 District Attorney Madison County
16 ELIZABETH HEALY, ESQ.
17 Assistant District Attorney

18 WILLIAM ROTH, ESQ.
19 Attorney for the defendant

20 Ryan M. Maher / Defendant

21
22
23 Thomas R. Frarey
24 Court Reporter
25

1 THE CLERK: The People of the state of New
2 York versus Ryan M. Maher, case number 2014-
3 0057.

4 THE COURT: The Court will note the appearance
5 of District Attorney William Gabor for the People
6 and Assistant DA Elizabeth Healy for the People.
7 Mr. Maher is appearing with his attorney, William
8 Roth. Folks, you can be seated.

9 The Court has had a number of discussions with
10 the attorneys in chambers about possible resolution
11 to these charges. And the last meeting I had was,
12 I don't know if it was a meeting, I got some papers
13 from the DA's Office. This was on June 25th. There
14 was a proposal made there which, I understand, Mr.
15 Roth has reviewed with his client and it is
16 acceptable. We may need to put it in somewhat
17 sharper focus though. Mr. Gabor, you can go ahead
18 and place this on the record.

19 MR. GABOR: Judge, thank you. Your Honor,
20 first of all, the defendant does appear with his
21 attorney, William Roth, for the anticipated purpose
22 of waiving his right to be indicted by grand jury of
23 Madison County and instead consenting to be
24 prosecuted by a superior court information under
25 indictment number 2014-0057 charging him with first

1 count of failure to register internet details, a
2 Class E felony, and endangering the welfare of a
3 child, Class A misdemeanor.

4 Judge, the charges really stem from two
5 different incidents. One incident involving
6 conduct -- or contact with an underage female. And
7 the second with his being previously adjudicated a
8 sexual offender and failing to comply with some
9 registration requirements.

10 The agreement is as follows, Judge: He would
11 plead guilty to both counts in the superior court
12 information. Thereafter, he would be sentenced
13 on the incident concerning the welfare of a child
14 charge to time served, \$200 surcharge, DNA sample
15 and \$50 fee, consent to an order of protection in
16 favor of the victim, sentenced on the failure to
17 register the internet details charge the defendant
18 would receive five years probation, surcharge,
19 obtain a sample and fee, and waiver of appeal
20 would be required on both charges.

21 Judge, I have provided a copy of the waiver of
22 indictment and the SCI to counsel for the defendant.
23 I have an order of protection here, when you are
24 ready on the temporary basis, as the underlying
25 order of protection has expired. And I have

1 proposed waiver of appeal.

2 THE COURT: Mr. Roth.

3 MR. ROTH: Yes, your Honor. I have -- I -- I
4 have discussed the offer with my client. There was
5 some initial confusion. And he might have had a
6 belief at one point he was going to have credit for
7 six months served on the felony, but I have
8 explained to him that he was not in jail for most of
9 the time. He was in jail on the misdemeanor
10 charges, the SORA came late. So, he understands if
11 he is pleading to the felony SORA charge he has got
12 no jail time credit. He would be getting a
13 straight probation sentence with no jail component
14 up front, and a five years' probation, and he does
15 have that understanding about the endangering
16 charge. And my only question had been about the
17 waiver of appeal, but I have explained he might
18 have to sign it today. The paperwork indicated it
19 might be at sentencing, but -- so he wants to
20 accept that offer. He wants to waive grand jury.
21 And I have explained this to him and he is
22 prepared to go forward.

23 THE COURT: Okay. Now, Mr. Maher, you can
24 remain seated.

25 MR. MAHER: Okay.

1 THE COURT: What you have heard is an offer
2 that is being made to you. You have no obligation
3 to accept it unless you want to, and if you want to
4 you certainly can. But, on the other hand, if you
5 want to reject it you are entitled to do that as
6 well. I am told that lingering out there in the
7 background there was the possibility of you being
8 charged with sexual abuse first degree, a Class D
9 felony. If the charge were to be brought and if
10 you were convicted of that, if there were any
11 resulting probation, that probation would be for a
12 period of 10 years not 5. Additionally, because
13 you previously been found to be a sex offender, a
14 subsequent sex offense would result in a presumptive
15 level 3 sex offender finding. Now, what's being
16 offered to you today is to charge you instead with
17 two counts. And what would otherwise be the
18 sexual abuse charge is going to be a misdemeanor
19 charge of endangering the welfare of a child, by
20 statute that is not a sex offense, even though it
21 may have a sexual overtone to it, but it is not
22 anything that would result in 10 years of
23 probation nor would it be subject you to another
24 sex offender risk assessment hearing with a
25 possibility of your level going from a level 2 to a

1 level 3. That is not in play at all.

2 Now, on that endangering charge, you apparently
3 done some time in jail, which has been, as I
4 understand it, more than four months. So your
5 sentence on the endangering, should you plead
6 guilty, would be six months and with credit for
7 good behavior the six months reduces to four. So,
8 effectively, you have done the jail time, that is
9 over. You get full credit for that.

10 Now, there is also in the proposed superior
11 court information a charge of failure to register
12 as a sex offender. You are to register any online
13 accounts like facebook or anything like that. And
14 it is alleged you failed to do that. So, that
15 would result in you being sentenced to probation
16 for a period of five years. It's a Class E felony.
17 It could be good for up to four years in state
18 prison, but as long as you comply with the terms
19 and conditions of probation, no problem there. But,
20 obviously, you have to do those things.

21 Now, there would be the surcharges of \$325 for
22 the felony, the failure to register; \$200 for the
23 misdemeanor endangering the welfare of a child.

24 You would have to submit a DNA sample and
25 possibly you have done that previously, but I think

1 what the state is looking for is the \$50 fee.
2 Obviously your DNA hasn't changed, but they are
3 looking for the \$50 fee.

4 And the final thing is a waiver of your right
5 to appeal. Now, it doesn't matter whether guilt is
6 a result of a plea of guilty or a jury verdict,
7 either way you are entitled to appeal, which means
8 taking it to a higher court for review. The higher
9 court is called the Appellate Division. And there
10 are five judges who together go over the record of
11 what happened here. If they find there was any
12 mistakes made or any of your rights violated they
13 can vacate the conviction, they could reduce or
14 totally throw out the sentence, or send everything
15 back here and tell me to do it all over again from
16 the top. But if you waive your right to appeal,
17 that means you are not going to a higher court for
18 review. The case would end right here in County
19 Court. So you understand all of that?

20 MR. MAHER: Yes, your Honor.

21 THE COURT: Now, to bring these charges, at
22 least the felony charge of failure to register, the
23 DA is ordinarily required, and you have this right
24 guaranteed to you under the constitution, both
25 federal and state constitutions, the DA is

1 obligated to present his proof before an
2 independent body of 23 people called a grand jury.
3 They don't decide whether you are guilty or not.
4 All they decide is, does the DA have enough
5 evidence to accuse you of the crime. And if they
6 find that he does have that evidence then they
7 make the accusation and it goes into a written
8 document called an indictment. But you can waive
9 that and instead of there being an indictment
10 coming from a grand jury, it's just the DA charging
11 you all on his own without having to go to a
12 grand jury. And in that case, the document is
13 called a superior court information. The only
14 difference between that and an indictment is where
15 it comes from and who signs it, but either way you
16 are charged with a felony. So, you understand all
17 of that so far?

18 MR. MAHER: Yes, your Honor.

19 THE COURT: Now, just because a superior court
20 information has been filed, that by itself does not
21 obligate you to plead guilty to anything. You
22 would have the right to plead not guilty, of course,
23 by doing that you are rejecting the offer from the
24 DA's Office and it still allows the DA to go back
25 to another grand jury and present proof on sexual

1 abuse. So, there is that possibility. If you
2 accept this the DA isn't going to do that. So,
3 you understand that?

4 MR. MAHER: Yes.

5 THE COURT: Okay. Now, as part of your right
6 to plead not guilty you would be entitled to make
7 pretrial motions. Those motions could require that
8 we hold hearings. And if the motions and hearings
9 don't dispose of the case, the case ultimately
10 goes to trial. At your choice this can be to a
11 jury of 12 or you can waive that and it is to me
12 without a jury, your choice, but either way the
13 burden of proof is on the DA's Office not you.
14 There is nothing that you have to prove or
15 disprove. The DA has to do all of the proof. And
16 the standard of proof is proof beyond a reasonable
17 doubt, the higher standard of proof the law
18 requires for anything. But if you choose to plead
19 guilty then there is no need for motions, no need
20 for hearings, and most importantly no need for a
21 trial. Do you understand all of that?

22 MR. MAHER: Yes.

23 THE COURT: So guilty whether it is by plea
24 or by verdict, guilty is guilty, do you understand
25 that?

1 MR. MAHER: Yes, sir.

2 THE COURT: Okay. Now, if you do plead guilty
3 that is fine. We have to adjourn it for a period
4 of about eight weeks to have a presentence report
5 done by probation. During that time there are
6 some things that could happen, these are all within
7 your control, but I will tell you now, any violation
8 of any of these things will hold you to your plea
9 of guilty, but now the limit on your sentence
10 can come off and you could be looking on the E
11 felony of up to four years in state prison. Now,
12 those things include any new crime committed by you
13 or your arrest on some other charges, that will be
14 a breach of your agreement. You would have to
15 obviously appear at the time of your sentencing.
16 So any willful failure on your part to show up is
17 going to be a breach of our agreement. I'm not
18 talking about things that are legitimately beyond
19 your control. So, if for example you are too ill
20 and in a hospital, we'll work with you on that.
21 But if you just fail to show up or you tell me you
22 forgot about the sentencing date and we are going
23 to have a major problem with that. Mr. Maher,
24 can I get your mailing address?

25 MR. MAHER: Uh, 855 Button Road --

1 THE COURT: Button, B-u-t-t-o-n?

2 MR. MAHER: Cicero, New York 13039.

3 THE COURT: 13031?

4 MR. MAHER: 13039.

5 THE COURT: Okay. Now, we are going to use
6 that to send you a notice. We are going to give
7 you just a few minutes a date and time for your
8 sentencing. If we have to charge that, it's not
9 likely, but if we do the only way we have of
10 notifying you of that is by mail. So if you change
11 your address but you don't let our court clerk
12 know, I mean obviously you will want to let your
13 attorney know, but let our court clerk know you have
14 a new mailing address.

15 MR. MAHER: Okay.

16 THE COURT: If you have changed your address
17 and we used the Button Road address and you don't
18 get the notice and for that reason don't show and a
19 willful failure to show up.

20 MR. MAHER: Always been that address.

21 THE COURT; All right. You also have to
22 cooperate with probation. That would mean going
23 from here over to Madison County Probation to
24 start the ball rolling for that presentence
25 report. They are going to hand it off to Onondaga

1 County Probation and you have to finish it up with
2 them. If you don't make an appointment or you make
3 an appointment but fail to keep it, that's a
4 breach of our agreement. You have to truthfully and
5 honestly answer whatever questions they ask of you.
6 If you give them false or misleading answers or you,
7 you know, deny any responsibility for anything
8 here, you know, for example if you plead guilty and
9 tell me you did it and you go tell them that you
10 didn't do it, that is a breach of our agreement,
11 so you understand that?

12 MR. MAHER: Yes, your Honor.

13 THE COURT: Okay. I don't anticipate you
14 having to go to jail between now and the time of
15 your sentencing, my guess is that is not going to
16 happen at all. But if you get picked up on some
17 new charges or they violate you on your probation
18 or something like that, any disciplinary violation
19 in the jail is also going to be a breach of our
20 agreement. So, you understand that?

21 MR. MAHER: Yes, your Honor.

22 THE COURT: I'm also going to sign today a
23 temporary order of protection to tie us over until
24 we get to sentencing. If you violate that in any
25 respect, that's a new crime. That is a breach of

1 our agreement. Do you understand that?

2 MR. MAHER: Yes.

3 THE COURT: Okay. Mr. Maher, do you have any
4 questions about any of that?

5 MR. MAHER: Not as of right now.

6 THE COURT: Now, has anybody made any different
7 or additional promises to you than that?

8 MR. MAHER: No.

9 THE COURT: So, got all of the cards face up
10 on the table for you.

11 MR. MAHER: Yes, your Honor.

12 THE COURT: Has anybody threatened you to
13 waive your right to a grand jury and make a plea
14 of guilty today?

15 MR. MAHER: No.

16 THE COURT: And Mr. Roth has been your attorney.
17 Have you been satisfied with his services?

18 MR. MAHER: Yes.

19 THE COURT; He has answered all of your
20 questions, explained your rights, and told you
21 what could happen if you give up those rights?

22 MR. MAHER: Yes.

23 THE COURT: Is that what he has told you
24 consistent with what you are hearing from me today?

25 MR. MAHER: Yes, your Honor.

1 THE COURT: Okay. Mr. Maher, you look bright
2 eyed and bushytailed to me today. I want to hear
3 it from you. Do you believe you are thinking
4 clearly today?

5 MR. MAHER: Yes.

6 THE COURT: Okay. So, in the last 24 hours
7 no alcohol, drugs, or medication that makes your
8 thinking fuzzy?

9 MR. MAHER: Nope, just coffee.

10 THE COURT: Any medication you were supposed to
11 have taken today that you haven't taken?

12 MR. MAHER: No, don't take medicine.

13 THE COURT: Clear as a bell then?

14 MR. MAHER: Yes, sir.

15 THE COURT; Do you believe you are being
16 rushed into this?

17 MR. MAHER: No.

18 THE COURT: Have you had a chance to think
19 about it, decide what you want to do?

20 MR. MAHER: Yes.

21 THE COURT: And the last question I will ask
22 you along these lines, it is going to seem a little
23 unusual, are you a US citizen?

24 MR. MAHER: I couldn't hear --

25 THE COURT: Are you a US citizen?

1 MR. MAHER: Yes.

2 THE COURT: The reason I'm asking you that,
3 if you are not and you get convicted of a felony
4 they could deport you, but if you are a citizen
5 we have no place to deport you to.

6 Okay. So, Mr. Maher, do you want to accept
7 the DA's offer?

8 MR. MAHER: Yes, I do.

9 THE COURT: First step then would be to sign
10 the waiver of indictment.

11 (Mr. Roth confers with defendant.)

12 THE COURT: I make a finding that Mr. Maher
13 has signed the waiver here in open court before me
14 today with the assistance of his attorney. It is
15 not the result of coercion or duress. So I
16 accept that. I'm signing now an order approving
17 that waiver, and both the waiver and the order are
18 now filed with the court clerk.

19 So, Mr. Maher, what I have now is a two count
20 superior court information charging you with
21 failure to register and endangering the welfare of
22 a child. With my assurance to you that your plea
23 of guilty to each of those counts will result in a
24 sentence exactly as I have described it for you
25 today, I'm now going to ask you, do you plead

1 guilty or not guilty?

2 MR. MAHER: Guilty.

3 THE COURT: Before I can accept that, I have
4 to have an understanding from you on the first
5 count, the failure to register, you were previously
6 convicted of a felony sex offense, true?

7 MR. MAHER: Yes.

8 THE COURT: And that was in the town of Cicero
9 Justice Court in 2012, it was a misdemeanor
10 conviction for sexual abuse 2nd degree, correct?

11 MR. MAHER: Yes.

12 THE COURT: And at some point after that were
13 you determined to be a level 2 sex offender?

14 MR. MAHER: Yes.

15 THE COURT: Okay. So you have an obligation
16 to register not only your address but any facebook
17 account or other email address you might have and
18 it's that that you failed to do?

19 MR. MAHER: Yes.

20 THE COURT: And that was back in January of
21 this year while you were living in the village of
22 Chittenango here in Madison County, correct?

23 MR. MAHER: Yes.

24 THE COURT: What was it you failed to
25 register facebook?

1 MR. MAHER: Facebook, yes.

2 THE COURT: Facebook account, okay.

3 MR. ROTH: Might have been a little earlier,
4 he was incarcerated in January.

5 THE COURT: I see, but it was around that
6 time?

7 MR. MAHER: (Moves head up and down.)

8 THE COURT: Now, the second count charging you
9 with endangering the welfare. You were living with
10 a family at the time and a member of that family was
11 a four year old girl, correct?

12 MR. MAHER: Yes, your Honor.

13 THE COURT: And you exposed your penis to her
14 apparently back in December of 2013, correct?

15 MR. MAHER: Yes.

16 THE COURT: Where was that address? Where
17 were you living?

18 MR. MAHER: My ex-girlfriend's house,
19 Tuscarora.

20 THE COURT: Tuscarora Road?

21 MR. MAHER: Yes.

22 THE COURT: In the village of Chittenango,
23 correct?

24 MR. MAHER: Yes.

25 THE COURT: And so you exposed your penis to

1 that child on four different occasions?

2 (Mr. Roth confers with defendant.)

3 MR. MAHER: Yes, I guess.

4 THE COURT: One of those occasions you were
5 in the act of masturbating, true?

6 MR. MAHER: Yes.

7 THE COURT: The Court will make a finding that
8 the defendant had made a knowing, intelligent, and
9 voluntary plea to each of the counts in the
10 accusatory instrument. Again, with the assistance
11 of his attorney. And not the result of coercion
12 or duress. So I accept the pleas of guilty and
13 based on it I find him guilty of the failure to
14 register count and the endangering the welfare of a
15 child.

16 We'll direct probation to prepare a presentence
17 report. This will be done by Onondaga County. So
18 we will need about 10 weeks for that. Dave, can
19 we get a date for sentencing, please?

20 THE CLERK: Thursday, October 2nd at 1:30.

21 THE COURT: Mr. Roth, okay with you?

22 MR. ROTH: Yes, your Honor. 1:30 you said?

23 THE COURT: 1:30. And, Mr. Gabor, with your
24 office okay? So, October 2nd at 1:30 in the
25 afternoon. Is Mr. Maher out on bail or is he

1 RORed?

2 MR. ROTH: I believe he was RORed when the
3 agreement was reached because he had enough time
4 in to satisfy the jail component.

5 THE COURT: Mr. Gabor, you okay with that?

6 MR. GABOR: Yes, your Honor.

7 THE COURT: Okay. So we will continue
8 Mr. Maher then released on his own recognizance.
9 So his next stop is directly from here -- after he
10 signs the waiver of appeal -- directly over to the
11 probation department to get the ball rolling on
12 that presentence report.

13 MR. GABOR: I am asking for an extension on
14 the temporary order of protection.

15 THE COURT: Yes, I will sign this as well.
16 Mr. Roth, we are going to hand that down to you so
17 your client can sign that temporary order of
18 protection. And then we will have copies made so
19 he will have that before you leave.

20 I'm now filing the waiver of appeal.

21 Mr. Maher and Mr. Roth have signed that. That is
22 filed with the court clerk.

23 So, subject to those copies of the temporary
24 order of protection being brought back, we are
25 going to stand in adjournment for sentencing on

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October 2.

Mr. Roth, anything further at this point?

MR. ROTH: Nothing further, your Honor.

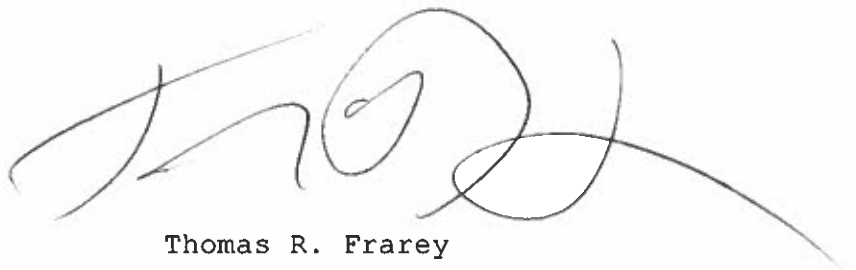
THE COURT: Mr. Gabor?

MR. GABOR: No, Judge.

THE COURT: Then we will see Mr. Maher back
here on October 2nd.

R E P O R T E R S C E R T I F I C A T I O N

I, Thomas R. Frarey, retired court reporter, do hereby
certify that the foregoing is a true and correct transcript of
my stenographic notes taken in the above-entitled matter at the
time and place first above-mentioned.

Dated: 3-7-22A large, stylized handwritten signature in dark ink, appearing to read 'T. Frarey', is written over the printed name.

Thomas R. Frarey

Retired Court Reporter